

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11552 of 2005

with

Special Civil Application No. 13434 of 2005

with

Civil Application No. 10706 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
fair copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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KANTILAL SHAMJIBHAI BHATT & 5 - Petitioner(s)

Versus

JAGDISH MANUBHAI SHAH - Respondent(s)

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Appearance :

Special Civil Application NO. 11552 of 2005

Mr. K.G.Vakharia, Senior Advocate with MR MK VAKHARIA for
Petitioners.

MR Mihir Joshi, Senior Advocate with Mr. AMAR N BHATT for
the Respondent.

Special Civil Application No. 11434 of 2005

Mr. Mihir Joshi, Senior Advocate with Mr. Amar Bhatt for the petitioner.

Mr. K.G.Vakharia, Senior Advocate with Mr. Mehul K.Vakharia for the respondents.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 16/03/2006

ORAL JUDGMENT

In both these petitions, the order dated 27th May, 2005 in Judicial Miscellaneous Application NO. 13 of 2005 passed by the Joint Charity Commissioner, Ahmedabad is under challenge. In that order, directions have been given by the Joint Charity Commissioner under section 41-A of the Bombay Public Trusts Act, 1950 in an application preferred by the petitioner of Special Civil Application no. 13434 of 2005 (Annexure "A" to the memo of both the petitions).

2. It is contended by the learned advocate for the petitioner in Special Civil Application no. 13434 of 2005 that the impugned order passed by the Joint Charity Commissioner is de hors the provisions of the Act and the directions given under section 41-A of the Act of 1950 deserve to be quashed and set aside. Consequently, the notice dated 26th June, 2005 (Annexure "C" to the memo of the petition in Special Civil Application no.

13434 of 2005) deserves to be quashed and set aside.

3. The learned Senior Advocate Mr. Mihir Joshi appearing for the petitioner submitted that with the consent of the trustees of the trust, namely Indian Society for Community Education (for short hereinafter referred to as "the trust"), Kantilal Shamjibhai Bhatt and Ushaben Shroff were appointed as trustees on 12th May, 1997 after registration of the trust vide trust deed dated 12th June, 1991. On 15th October, 1981, the trust was established by Ramlal Parikh and Vinod Tripathi and by the petitioner who was the founder trustee of the ISCE trust. Thus, on 12th May, 1997, unanimously the trustees who are respondent nos. 1 and 2 were appointed. Upon death of Ramlal Parikh on 21st November, 1999, Mandaben Ramlal Parikh was unanimously appointed as a trustee on 28th November, 1999 and the petitioner was unanimously appointed as the Executive Chairman of the trust. Shri Vinod Tripathi expired on 17th December, 2000. Since then the petitioner was unanimously appointed as Executive Chairman of the trust. Subsequently, Parikshit Jayendrarao Divetia- respondent no. 4 was appointed as a trustee on 19th July, 2003. This was also a unanimous decision of the rest of the trustees. It is also alleged by the learned counsel appearing for the petitioner that

till these appointments of the additional trustees, the petitioner was not knowing the collusion of respondent nos. 3 and 4 with respondent nos.1 and 2 to the effect that the petitioner should be ousted from the trust as Executive Chairman and the management and control of the trustee and its funds are to be taken over by rest of the trustees. It is further contended by the learned Senior Counsel for the petitioner that a meeting was held on 27th June, 2004 and the petitioner was shocked to receive a draft of certain resolutions which were sought to be passed as part of the minutes of the meeting, for obtaining the petitioner's signature. Thereafter, an application bearing Application no. 23 of 2004 was preferred by the petitioner under section 41-A of the Act of 1950 before Joint Charity Commissioner, Ahmedabad in which respondent nos. 1 to 4 gave a pursis that they have no objection if the resolution purported to have been passed in the meeting dated 27th June, 2004 is quashed. (Annexure "B" to the memo of the petition). In pursuance of this pursis, an order was passed by the Charity Commissioner, State of Gujarat, on 26th October, 2004 (Annexure "C" to the memo of Special Civil Application no. 11552 of 2005), whereby the application preferred by the petitioner of Special Civil Application no. 13434 of 2005 was allowed and the letter written by respondent

nos. 1 to 4 dated 27th June, 2004 or the resolution passed in the so called meeting was not given any effect to. It is also contended by the learned counsel for the petitioner that thereafter in the meeting dated 21st January, 2005, in which the petitioner was not present, certain resolutions have been passed (Annexure "I" to the memo of Special Civil Application no. 11552 of 2005). One more trustee, namely Smt. Ushaben Shroff was also not present in the said meeting dated 21st January, 2005. Three resolutions were passed in the said meeting. Two new trustees were appointed, namely Dr. Urmilaben Chimanbhai Patel and Mayankbhai Chandrakantbhai Upadhyay and it was resolved that the names of these two new trustees should be jointed in the bank account so that financial transactions can be properly done by them also. It is alleged by the learned Senior Counsel for the petitioner that this meeting was not called by the petitioner. Subsequently, Dr. Urmilaben Patel showed her inability to work as Chairperson and therefore, another Chairman, namely respondent no. 4 Parikshit J Divetia was appointed as Chairman vide meeting dated 2nd February, 2005. Therefore, an application was preferred bearing Judicial Miscellaneous Application no. 13 of 2005 by the petitioner under section 41-A of the Act of 1950. Several contentions have been raised as to the scope of

the meeting which the respondents have labelled as "requisition meeting" and also to the effect that whether appointment of the new trustees made by few of the existing trustees is valid or not. In detail, collusion between respondent nos.1 and 2 with respondent nos. 4 and 5 has been mentioned. It is contended by the learned Senior Counsel for the petitioner that directions given by the impugned order of the Charity Commissioner deserves to be quashed and set aside. Issuance of such directions are dehors the powers conferred upon the Charity Commissioner under the Act of 1950. The learned Senior Counsel has also relied upon the decision rendered by the Bombay High Court in the case of **Mahomed Jaffer Haji Nazaralli Devji V/s. Mahomed Janmahomed and others** reported in **A.I.R. (31) 1944 Bombay 222**. It is pointed out from the aforesaid judgment that the appointment of a new trustee ought to be unanimous in nature and if any of the trustees is absent, or is not agreeing with the appointment of new trustee, then they must obtain order of a court. Similarly, reliance has also been placed upon the cases decided by this Court as well as the Apex Court in the case of **M/s. Shanti Vijay and Co. and others vs. Princess Fatima Fouzina and others** reported **1979(4) SCC, 602** and in the case of **Special Land Acquisition Officer vs. Fulabhai Jivabhai and others** reported in **1972(3) GLR,**

828. It is contended by the learned advocate for the petitioner that in view of the aforesaid two judgments, certain decisions ought to be taken unanimously by all the trustees and if the same is not taken unanimously, it has been quashed and set aside vide aforesaid two judgments, even though they are commercial in nature. In the facts of the present case, it is resolved in the meeting dated 21st January, 2005 in absence of two trustees, namely the petitioner himself as well as in absence of another trustee, namely, Smt.Ushaben Shroff, two new trustees were appointed and therefore, the resolutions passed in the meeting dated 21st January, 2005 may not be given any effect to.

4. I have also heard the learned counsel for the respondents. Learned Senior Counsel Mr. Vakharia has mainly submitted that the approach of the petitioner is totally adamant and non-cooperative. Every time, certain agendas were proposed by some of the trustees and for holding the meeting, but the petitioner is not calling the meeting and whenever he is calling the meeting of the trustees, the agendas suggested by rest of the trustees were not incorporated by him. Several litigations have been initiated at the behest of the petitioner, namely Application no. 23 of 2004 under

section 41-A of the Act of 1950, Application no. 10 of 2004 under section 50-A of the Act of 1950 for the scheme, Civil Suit no. 3096 of 2004, Special Civil Application no. 587 of 2005 and Civil Suit no. 168 of 2005 and lastly, Application no. 13 of 2005 under section 41-A of the Act of 1950. The learned Senior Counsel Mr. Vakharia for the respondents in Special Civil Application no. 13434 of 2005 and as petitioners, has taken this Court to various letters and pointed out that the petitioner of Special Civil Application no. 13434 of 2005 is not calling the meeting and is not fixing the agenda for the items which are suggested by rest of the trustees and therefore, Smt. Mandaben Ramlal Parikh convened the meeting on 13th January, 2005, but the petitioner of Special Civil Application no. 13434 of 2005 showed his inability to remain present and therefore, a meeting was again convened on 21st January, 2005. The agenda was already given to all the trustees. Special Civil Application no. 587 of 2005 was preferred by the very same petitioner on 20th January, 2005, but no stay was granted by this Court. Jagdishbhai M Shah did not attend the meeting and therefore, rest of the trustees passed certain resolutions on 21st January, 2005, wherein Mayankbhai Chandrakantbhai Upadhyay was appointed as a Treasurer

and he was also appointed as a new trustee. Similarly, Dr. Urmilaben Patel was also appointed as a new trustee. It was further resolved that the trust is performing all its works through acting Chairman Jagdishbhai Shah and therefore, instead of acting Chairman, regular appointment of Chairman was made and hence only appointed trustee Smt. Urmilaben was appointed as a regular Chairperson of the trust. It is contended by the learned Senior Counsel Mr. Vakharia that no illegality has ever been committed by the trustees who were present in the meeting of 21st January, 2005, in passing the resolutions which are resolved in the said meeting. On the contrary, they have acted as per the trust deed (Annexure "K" to the memo of Special Civil Application no. 11552 of 2005. It is vehemently submitted by the learned Senior Advocate Mr. Vakharia that as per the trust deed, the board of trustees shall have the power to transact any business by circular resolution, which, if approved, by majority of the trustees, shall be deemed to be valid as if it was passed in the meeting. Mr. Vakharia has taken this Court to various clauses of the trust deed and has pointed out that no illegality has ever been committed by the trustees in passing the resolution in the meeting dated 21st January, 2005. This aspect of

the matter has not been appreciated by the Joint Charity Commissioner, Ahmedabad, while passing the impugned order dated 27th May, 2005. The Joint Charity Commissioner cannot replace the terms of the trust deed. It is also submitted by Mr. Vakharia that appointment of two trustees who are respondent nos. 5 and 6 in Special Civil Application no.13434 of 2005 will come into effect no sooner did they are appointed. The entry of their names in PTR under the provisions of the Act of 1950 is nothing but a mere formality and procedural aspect and therefore, they ought to have been allowed to work as trustees and therefore, direction no. 4 given in the impugned order deserves to be quashed and set aside. It is further submitted by the learned Senior Advocate Mr. Vakharia that the powers exercised under section 41-A of the Act of 1950 by the Joint Charity Commissioner, Ahmedabad are unreasonably excessive usage of powers. The powers conferred upon the Charity Commissioner under section 41-A ought to have been exercised in some exceptional, unforeseen, unexpected or in peculiar situation which must have arisen in the administration of the public trust and to cure such situation, as a remedial direction, the powers could have been exercised. No such exceptional, unforeseen, unexpected or peculiar

situation as ever arisen in the administration of a public trust and therefore, the exercise of powers by the Joint Charity Commissioner, Ahmadabad by passing the impugned order dated 27th May, 2005 deserves to be quashed and set aside. The interference in the management of the public trust by the impugned order is uncalled for and unwarranted.

5. The learned advocate for the respondents in Special Civil Application no. 13434 of 2005 submitted that the petitioner is not calling the meeting at all, neither agenda supplied by other trustees are considered by him and is acting as if the petitioner is the sole trustee of the trust. Time and again, letters have been written, but the petitioner, has turned deaf ears to, the requests of the rest of the trustees and therefore, holding of the meeting on 21st January, 2005 and the proceedings thereat was true, correct, legal and in consonance with facts of the case and this aspect of the matter has not been appreciated by the Joint Charity Commissioner, while quashing the proceedings of the meeting on 21st January, 2005. The learned counsel for the respondents has also relied upon judgments reported in **2002(3) Bombay, CR, 161; and AIR 1993, SCW, 3006 equivalent to AIR 1993,**

Supplementary (4) SCC,26.

6. Having heard the learned counsel for the rival parties and looking to the facts and circumstances of the case, in my opinion, the impugned order dated 27th May, 2005 in Judicial Miscellaneous Application no. 13 of 2005 passed by the Joint Charity Commissioner, Ahmedabad requires to be quashed and set aside mainly for the following facts and reasons:

(i)The Joint Charity Commissioner, Ahmedabad has committed an error on the face of the record to the effect that after coming to the conclusion that the meeting dated 21st January, 2005, was illegal, still however, directions have been given.

(iii) The meeting dated 21st January, 2005 was called by respondent no. 3 of Special Civil Application no. 13434 of 2005 (petitioner no.3 of Special Civil Application no. 11552 of 2005) and in the said meeting, two trustees were absent, namely Ushaben Shroff as well as Jagdishbhai Shah who is the petitioner in Special Civil Application no.13434 of 2005. In absence of these two trustees, rest of the three trustees

appointed two new trustees, namely Dr. Urmilaben Chimanbhai Patel and Mayank C Upadhyay. The appointment of trustees ought to have been done as unanimous resolution of all the trustees. If some of the trustees are absent in the meeting or if they have not consented for the appointment of new trustees, a new trustee cannot be appointed by simple majority. The trust deed (Annexure "K" to the memo of Special Civil Application no. 11552 of 205) permits the board of trustees to transact "by business" by a circular resolution which, if approved by majority of members, shall be deemed to be valid as as if it was passed in the meetings. This clause cannot be made operative for the appointment of the new trustees. The word "any business" is to be read for the normal transactions, which the trust is undertaking, at the meetings to achieve the aims and objects of the trust. The appointment of new trustees, ought to have been done by unanimous decision as held by the Bombay High Court in the case of **Mahomed Jaffer Haji Nazaralli Devji vs.**

Mahomed Janmahomed and others reported in**AIR (31) 1944, Bombay, 222.** The relevant

portion of the judgment reads as under:

"The first question is whether under the circumstances and in view of the four decisions of this Court there remains any scope for discussion. It has been strongly urged that I should not consider the question open for discussion any longer, and as a Court of co-ordinate jurisdiction these decisions are binding on me. There is considerable force in the contention that the power to appoint new trustees is the joint act of all the trustees, and if they do not agree, the matter becomes one where the Court's intercession must be called for. If all the trustees do not agree to perform that duty, which is a joint one, it cannot be performed by them and they must obtain an order of the Court. Having regard to the state of law and the practice followed in this Court for the last nine years, I think the first question must be answered in the negative. The answer to the second question will also be in the negative."

The appointment of the new trustees cannot be equated with ordinary business of the trust. Looking to the facts of the present case, it seems that out of five trustees, two trustees were absent. New trustees have not been appointed unanimously and therefore, this aspect of the matter has not been appreciated by the Joint Charity Commissioner, while passing the impugned order.

(iii) It is also averred by the learned

advocate for the respondents in Special Civil Application no. 13434 of 2005 and the petitioner of Special Civil Application no. 11552 of 2005 that Jagdishbhai Shah is not convening the meeting of the board of trustees. The agendas given by other trustees are not considered at all by Jagdishbhai Shah and under these facts and circumstances of the case, the meeting was convened initially on 13th January, 2005 by Mandaben Ramlal Parikh and subsequently, on 21st January, 2005, resolutions were passed, whereby new two trustees were appointed for the appointment of Chairman of trustees and treasurer of the trust. This argument is not accepted by this Court, mainly for the reason that the resolutions passed at the meeting of the appointment of two trustees was not unanimous and the appointment of the Chairman of the trust, of Dr. Urmilaben Patel has also not been accepted by the said newly added trustees. There are certain allegations as to the collusion between respondent nos. 1 and 2 that respondent nos. 3 and 4 of Special Civil Application no. 13434 of 2004. This

aspect of the matter has also not been appreciated by the Joint Charity Commissioner, Ahmedabad. When this Court is remanding the matter, it is not necessary for this Court to go into fine nicety of facts.

(iv) The learned counsel for the respondents in Special Civil Application no. 13434 of 2005 submitted that several litigations have been initiated by the petitioner against the trust. There is an application bearing No. 10 of 2004 under section 50-A of the Act of 1950 and civil suits were also preferred. It is submitted by the learned advocate for the petitioner that civil suit no.168 of 2005 has been withdrawn and Special Civil Application no. 587 of 2005 has also been withdrawn, but Application no.10 of 2004 preferred by Shaileshbhai and Pankaj Trivedi under section 50-A of the Act is pending before the office of the Charity Commissioner, Ahmedabad. As the matter is pending before the office of the Charity Commissioner, which is altogether a different application under section 50-A of the Act of 1950, it is not necessary for this

Court to discuss about the said sub judice matter. Initially also, a meeting was called on 27th June, 2004 by few of the trustees and there was a resolution/draft resolution which was sent to the petitioner of Special Civil Application no. 13434 of 2005, whereby tenure of the Chairman and Secretary were restricted and Mandaben was appointed as Secretary of the Trust. This was also challenged by way of application no. 23 of 2004 and for getting a direction under section 40-A of the Act of 1950. But a pursis was filed dated 24th August, 2004 (Annexure "B" to the memo of SCA No. 11552 of 2005) to the effect that in fact, no such resolution was ever passed. Nonetheless, even if this resolution is said to have been passed in the meeting dated 27th June, 2004, it may be quashed. In pursuance of this pursis, an order was passed by the Charity Commissioner, Ahmedabad dated 26th October, 2004 (Annexure "C" to the memo of Special Civil Application NO. 11552 of 2005). Thus, an initial attempt was brought to an end by such pursis and the order passed by the Charity Commissioner, Ahmedabad. The

decisions relied upon by the learned advocate for the respondents are not helpful to the respondents as the facts of the present case are different. The appointment of new trustees has been made in absence of two trustees, out of five trustees. One of the newly appointed trustees, namely Dr.Urmilaben C Patel was appointed as the chairperson of the trust, who has shown her inability to work as chairperson. Earlier pursis dated 24th August, 2004 and the order dated 26.10.2004 passed by the Charity Commissioner also would have been kept in mind while giving a direction under section 41-A of the Act, especially when there are allegations as to collusion between respondent nos. 1 and 2 with respondent nos. 3 and 4. There is no appointment of governing council as per the trust deed. There is no secretary in the present trust. Looking to the facts of the case and looking to the controversy as to agenda, the Joint Charity Commissioner, Ahmedabad ought to have granted a small agenda of work to be done by the trust in top priority by giving tentative

date of the meeting also. If the agenda is left at the discretion of the trustees, who are disputing interse, no agenda shall be fixed at all. Everything is at a belligerent stage. In such circumstances, correct exercise of the powers under section 41-A of the Act of 1950 for administration of trust or proper administration of trust is to give agenda of the top priority of the trust and a tentative date of the meeting should also be given to such type of trust. Thereafter, in the subsequent meeting, the trust can pass other resolutions.

7. As a cumulative effect of aforesaid facts, reasons and judicial pronouncements referred to hereinabove, the order dated 27th May, 2005 in Judicial Miscellaneous Application no. 13 of 2005 passed by the Joint Charity Commissioner, Ahmedabad is hereby quashed and set aside. The Joint Charity Commissioner, Ahmedabad is hereby directed to decide Judicial Miscellaneous Application no. 13 of 2005 afresh, after giving an opportunity of being heard to both the parties within a period of four weeks from the date of receipt of writ from this Court. The concerned

authority shall decide the application under section 41-A of the Act of 1950 independently and in accordance with law and after taking into consideration the judicial pronouncements referred to hereinabove, till then, respondent nos. 5 and 6 of Special Civil Application no. 13434 of 2005 shall not act as trustees of the trust. Rule made absolute in Special Civil Application no. 11552 of 2005. Special Civil Application 13434 of 2005 stands disposed of, in view of the aforesaid order. Civil Application no.10707 of 2005 in Special Civil Application no. 13434 of 2005 does not survive in view of the judgment passed in the main petitions.

(D.N.Patel, J)

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